THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.12565, 12566, 19615, 19616, 19617, 19618,
20224 & 20253 of 1996

COMMON ORDER:

In all these writ petitions, common questions of law and fact arise for consideration, therefore, they are being disposed of by this common order.

It appears, respondent-workmen were appointed in the petitioner Corporation in various capacities and they were continued beyond the age of 55 years. However, their services were terminated thereafter on the ground that they have attained the superannuation age of 55 years. Aggrieved by the same, respondent workmen raised conciliation proceedings and on failure of conciliation, they have raised a dispute under Section 2A(2) of the Industrial Disputes Act, 1947 before the Chairman, Industrial Tribunal-cum-Labour Court, Anantapur. It was the case of the respondent-workmen that their services were regularized in various cadres and they were even promoted to further posts and their services are governed by the Industrial Employment (Standing Orders) Act, 1946 (for short 'the Act'). According to the workmen, the action of the Corporation is arbitrary and illegal and the management has not followed the procedure as required under Section 25F of the Industrial Disputes Act, 1947 (for short 'I.D. Act').

It is the case of the petitioner Corporation that the claim of the workmen is not maintainable as per Rule 16 of the Service Rules of the Corporation, which reads as under:

> "All employees shall retire from the services of the Corporation on 31st March following completion of 55 years of ago. This retirement age may be extended to 58 years at the maximum subject to production of fitness certificate on medical examination by an appointed Doctor on an application by the employee".

The workmen were retired from service as per the said rule basing on the date of birth certificates submitted by them at the time of their appointment. The retirement age of the workmen is not in dispute, therefore, the question of satisfying the mandatory provisions of Section 25-F of the I.D. Act does not arise. The workmen are estopped from questioning the retirement as they have received all the retiral benefits without any protest whatsoever.

After considering both oral and documentary evidence, the Industrial Tribunal-cum-Labour Court held that;

> "Coming to the question of age of superannuation, neither the petitioner nor the management/respondent got the appointment order of petitioner marked as exhibit. But, in the service record of the petitioner filed by the respondent, I find the copy of the appointment order and as per clause No.8 of the same, 'the service of the petitioner would be governed by the service rules of the Corporation in force from time to time'. It means that these service rules are liable to be changed or amended from time to time. Obviously, the service rules which were in operation at the time when the petitioner joined the service are not filed and on the other hand, the proforma service rules have been filed in another case I.D.No.198/92 on the file of this Court. As per clause 16 of the said service rules, the retirement age is 55 years and the clause continues to read that 'the retirement may be extended upto 58 years on an application submitted by the workman and subject to production of fitness certificate by the appointed Doctor'. No doubt it is the contention of the respondent that the workman never requested for extension of his service upto 58 years, but by filing this I.D., the petitioner contended that he is subjected to premature retirement. If according to the respondent the age of retirement is only 55 years, the petitioner should have been retired by order dated 5.2.1992 w.e.f. 13.2.1992. It means that the petitioner was continued for more than one year even after attaining the admitted age of superannuation i.e. 55 years. This continuation of the petitioner even after the attainment of the age of superannuation could be only at the request and representation of the petitioner. Obviously the management before serving Ex.W-1 did not serve a notice upon the petitioner

calling upon him to inform about his willingness either to continue the service or to have retirement which was incumbent upon them in the circumstances of the case. On the other hand, as against the actual date of retirement i.e. 28.12.1990, the petitioner was asked to have retirement w.e.f. 13.2.1992 and this gave an impression to the petitioner that the management is interested in exercising discretion under clause 16 of the service regulations and to extend his services till he attains the age of 58 years. Thus, from the circumstances of continuing the petitioner beyond 55 years, the management also gave an impression to the petitioner that at any time they may call upon him to produce the physical fitness certificate so as to enable them to continue. When admittedly the age of retirement is neither as per the exact date of attaining the age of 55 years or 58 years, but some other date in between, I have to hold that the management intended to continue the petitioner till he attains the age of 58 years. It is an admitted fact that till the date of service of Ex.W-1, the petitioner never suffered from any kind of ailment. That being so, had the management wanted, the petitioner would have filed the physical fitness certificate by 28.12.1990 and in that event it would have become incumbent upon the management to extend the service of the petitioner upto 58 years by virtue of clause 16 of the service regulations. Hence I have no hesitation to hold that the retirement of the petitioner w.e.f. 13.2.1992 is not in agreement with the clause 16 of the service regulations and therefore the management should have continued the petitioner till he attains the age of 58 years. Consequently, the retirement order must become bad in the light of Section 25F of the I.D. Act, because it is nobody's case that Section 25-F is complied with. No doubt the petitioner raised this I.D. having accepted and received the entire retirement benefits, but as I said earlier by continuing the petitioner beyond the age of 55 years the respondent gave an impression to the petitioner that they are interested in continuing him upto 58 years. Thus in the light of the conduct of acquiescence on the part of the respondent, the conduct on the part of the petitioner in raising this I.D. having accepted the pension benefits without protest has got to be ignored. Thus, in the light of my discussion above, the petitioner shall be entitled for reinstatement with continuity of service. But as on today, he also attained the age of 58 years. Therefore, there is no scope for me to direct the respondent to physically reinstate him into service. Hence the petitioner shall

be entitled only for notional reinstatement order with continuity of service and backwages for the remaining period of service."

The learned counsel for petitioner Sri O.Manohar Reddy strenuously contended that as per Rule 16 of the Service Rules of the Petitioner Corporation, which govern the service conditions of the respondent-workmen, the impugned order of retirement was passed. If any workman wants to continue in service beyond 55 years, it is for him to make an application along with medical certificate to show that he is fit to be continued. When such applications were not received from the workmen, the petitioner Corporation has taken a decision to retire the respondent-workmen after attaining the age of superannuation, therefore the impugned orders were passed.

The matter was adjourned twice for getting instructions as to whether or not the service regulations purported to be governing the service conditions of the respondent-workmen are approved under Industrial Employment (Standing Orders) Act, 1946. The learned counsel for the petitioner has fairly conceded that there are no such certified standing orders for this industry. He also further contended that it was never the case of the workmen that they are entitled to be continued upto the age of 58 years and there is no evidence to that effect. Even before the Conciliation Officer, they have not stated so.

Per contra, the learned counsel for respondent-workmen supported the award passed by the Labour Court and contended that the Labour Court has not committed any error calling for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned award and other material made available on record.

At the outset, I am of the opinion that no ground is made out to interfere with the award passed by the Labour Court. It is an admitted

fact that there are no certified standing orders governing the service conditions of the workmen. On the other hand, Schedule-I B(3) of the of the Industrial Employment (Standing Orders) Central Rules, 1946 contemplates age of retirement, which reads as under:

> Age of retirement
>
> The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of (58) years of age by the workman.

Since there are no certified standing orders, the age of superannuation shall be taken as 58 years as per the above provision. Therefore, the impugned orders of termination are invalid. May be, during the course of conciliation, the workmen have not raised any dispute as to this aspect, but in the claim petition filed by them, they have categorically asserted that though they have not reached the age of retirement as per Industrial Employment (Standing Orders) Act, 1946, they were retired from service purported to be on attaining the age of superannuation i.e. 55 years, which is illegal. Therefore, I am of the opinion that Rule 16 of the Service Rules purported to have been framed by the petitioner Corporation have no binding effect under law. Further, neither there is any agreement nor any award nor settlement between the parties governing the age of superannuation, therefore, under Schedule-I(B)(e) of the Industrial Employment (Standing Orders) Act, 1946, the respondent-workmen are entitled to be continued upto the age of 58 years. Under these circumstances, I am of the opinion that the Labour Court has not committed any error calling for interference of this Court under Article 226 of the Constitution of India. The writ petitions are devoid of merits and liable to be dismissed.

Accordingly, the writ petitions are dismissed. No order as to costs.

_____

C.V.RAMULU, J

Date: 2.1.2007

DA

THE HON'BLE SRI JUSTICE C.V.RAMULU

2.1.2007

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.12565, 12566, 19615, 19616, 19617, 19618,
20224 & 20253 of 1996

Date: 2nd January, 2006

W.P.No.12565 of 1996

Between:

The Andhra Asbestos Corporation Ltd.,
rep. by its Deputy Manager & another. .. Petitioners

And

G.Narasimhulu & another.
.. Respondents

W.P.No.12566 of 1996

The Andhra Asbestos Corporation Ltd.,
rep. by its Deputy Manager & another. .. Petitioners

And

P.Ramaiah & another.
.. Respondents

Between:

Reddy Asbestos Mines, rep. by its
Manager.

.. Petitioner in W.P.Nos.19615, 19616,
19617, 19618, 20224 & 20253 of 1996

And

The Chairman-cum-Presiding Officer,
Industrial Tribuanl-cum-Labour Court,
Anantapur & another.

.. Respondents in W.P.Nos.19615, 19616,
19617, 19618, 20224 & 20253 of 1996